the words of the document, and the practical objections are reduced to a minimum. See 4 WIGMORE, EVIDENCE, § 2472. The ruling in the principal case would destroy a well-established rule of exclusion.

PHYSICIANS AND SURGEONS — NECESSITY OF PATIENT'S CONSENT TO OPERATION. — The plaintiff consented to be operated on by the defendant for a rupture in the left groin. After the patient was under the anæsthetic the defendant found in the right groin a rupture, dangerous to the plaintiff's life, and operated on that side instead of the other. The plaintiff brought suit for assault and battery. *Held*, that the plaintiff cannot recover. *Bennan* v. *Parsonnet*, 83 Atl. 948 (N. J.).

Ordinarily a surgeon is not justified in performing an operation more serious than the one expressly consented to. *Pratt* v. *Davis*, 224 Ill. 300, 79 N. E. 562. But when new conditions are found after the anæsthetic has been administered, making a different operation advisable, the public interest in the preservation of life and health gives weight to the argument that the surgeon should be allowed to use his discretion. In such a case it has been suggested that the patient impliedly consents to the different operation. See *Mohr* v. *Williams*, 95 Minn. 261, 269. A result of this view is seen in the suggestion by the court in the principal case that there is consent to operations similar to that authorized and no more serious. It would seem to be better to rest the justification directly on grounds of public policy rather than on the fiction of implied consent. Such a justification would be confined strictly to cases where the plaintiff's life was in immediate danger, and in all other cases he should be allowed to regain consciousness and given an opportunity to give or withhold actual consent.

POWERS — ATTEMPT TO EXERCISE A POWER CONTAINED IN THE WILL OF A LIVING TESTATOR. — A will provided that in case of a legatee's predecease, the legacy should go to whomever the legatee should appoint by will. The legatee predeceased the testatrix, leaving a will exercising the power. *Held*, that the power is not validly exercised. *In re Mayo's Will*, 136 N. Y. Supp. 1066 (N. Y., Sur. Ct.).

A power to dispose of property must be created by an instrument which would itself be sufficient to dispose of that property. *Clark* v. *Graham*, 6 Wheat. (U. S.) 577; *Williams* v. *Paine*, 169 U. S. 55, 18 Sup. Ct. 279. Since a will can only dispose of property at the testator's death, it cannot create a power until then. *Jones* v. *Southall*, 32 Beav. 31. The slight weight of authority holds invalid the exercise of a power by a will executed prior to its creation. *Matteson* v. *Goddard*, 17 R. I. 299, 21 Atl. 914. *Contra*, *Burkett* v. *Whittemore*, 36 S. C. 428, 15 S. E. 616. The opposite result is reached under the English Wills Act. *Boyes* v. *Cook*, 14 Ch. D. 53; *Airey* v. *Bower*, 12 A. C. 263. But invalidity of the exercise seems inevitable where, as in the principal case, the probate of the will precedes the power's creation, because the power cannot be exercised while inchoate. *Jones* v. *Southall*, *supra*. The decision is further supported by the fact that the donee of the power was dead at its creation and a statute limited the exercise of powers to persons capable of transferring property. N. Y. CONSOL. LAWS, 1909, c. 52, § 114. Nor can the intent of the testator be carried out without resort to the doctrine of powers, since it is an attempt in substance to incorporate by reference a non-existing document. A provision against the lapsing of a legacy by a power of appointment in the legatee is thus impossible.

RECEIVERS — POWER TO SUE IN A FOREIGN JURISDICTION. — A statute made receivers the assignees of the corporation's property. A receiver appointed under this statute brought suit in a foreign jurisdiction against a stockholder for an assessment levied on his stock by the court in which the receivership